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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-182

ANTHONY J. CELEBREZZE, JR.,
IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR
THE STATE OF OHIO,
Petitioner,

V.

JOHN B. ANDERSON, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE STATE OF MAINE AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTERESTS OF AMICUS CURIAE

The interests of the amicus curiae and its reasons for urging this court to review the decision in *Anthony J. Celebrezze, Jr. v. John B. Anderson, et al.*, — F. Supp. —, No. C-2-80-400 (S.D. Ohio July 18, 1980), *appeal docketed*, No. ——, U.S. Court of Appeals for the Sixth Circuit, July 30, 1980, are as follows:

Amicus is a sovereign state which, like Petitioner, amicus Maryland and two other states, has a filing deadline for independent candidates which has been challenged by Respondent John B. Anderson as unconstitutionally interfering with his associational rights and the rights of his supporters to cast their votes for him. The United States District Court for the District of Maine found Maine's April 1 filing deadline unconstitutional. *Anderson v. Quinn*, — F. Supp. —, Civil No. 80-176P (D. Me. Aug. 11, 1980). The basis for the District Court's decision was that the deadline imposed substantial and unequal burdens on the rights of association and franchise of Respondent Anderson and his supporters without being supported by any compelling state interest. Maine has filed a notice of appeal to the United States Court of Appeals for the First Circuit.

Maine's interest in this Court's action in *Celebrezze v. Anderson* is significant. Ohio's filing deadline is so close to Maine's that it would appear that the legal issues presented are identical in all material respects.

As in Maryland, New Mexico and Ohio, the District Court in Maine failed to apply the "reasonably diligent

candidate" standard announced by this Court in *Storer v. Brown*, 415 U.S. 724 (1974) and applied thereafter in *Mandel v. Bradley*, 432 U.S. 173 (1977), to determine whether the burden on Respondent Anderson to comply with Maine's deadline was unconstitutionally severe. The District Court made no reference to the fact, established in the record, that 12 independent candidates qualified for the 1980 general election ballot and that, of these 12, three are candidates for President of the United States. Moreover, that court, like the other three District Courts which have ruled on these issues, also ignored the very real distinctions between the processes through which party and non-party Presidential candidates achieve ballot access which would permit the State to treat them differently without violating the Constitution and which would trigger the application of the "reasonably diligent candidate" test.

Given the similarity of the legal issues presented in all of the cases so far decided in which John Anderson has challenged filing dates for independent candidates, it would appear almost certain that a decision on the merits in the Ohio case would control the disposition on appeal of the other cases.[1] Ohio's petition for certiorari should therefore be promptly considered so that the voters and relevant state officials in all of the affected states will know prior to the general election whether John Anderson is entitled to be on their ballots.

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[1] At this time, two of the three other states in which decisions have been rendered in the District Court, Maine and Maryland, have appealed to the Court of Appeals. The decision in New Mexico does not appear to be a final judgment.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT OHIO'S PETITION FOR WRIT OF CERTIORARI IN ORDER TO PROVIDE CERTAINTY TO THE STATES INVOLVED ON THE ISSUE OF THE CONSTITUTIONAL STANDARD APPLICABLE IN INDEPENDENT FILING DEADLINE CASES.

This case satisfies the "imperative public importance" standard set out in Rule 18 of the Rules of the United States Supreme Court. Because of the number of states involved and the effect of a ruling on the impending general election, it is critical that this Court grant Ohio's petition for a writ of certiorari. Ohio, in its petition, and Maryland, in its brief as *amicus* in support of the granting of the petition, have very persuasively set out the reasons this writ should be granted. Maine generally agrees with these arguments and therefore will not repeat them herein.

Maine does wish to comment briefly on a single area of analysis which was neglected by all the courts below. Maine argued in the District Court that, because of the differences in procedure for achieving ballot position between party and non-party Presidential candidates, no legitimate comparison between the two classes could be made, and there could therefore be no invidious discrimination in violation of the Equal Protection Clause. In *Anderson v. Quinn*, *supra*, the District Court rejected this argument. Its view of the proper classes to be compared in order to determine whether Maine's filing date violated the Equal Protection Clause of the Fourteenth Amendment was described as follows:

> Plainly, the burdens imposed on independent Presidential candidates must be compared with those im-

> posed on other candidates for the same office, not with candidates for other offices who are elected *through an entirely different process.*
>
> *Anderson v. Quinn, supra,* slip opinion at 7 (footnote omitted) (emphasis added).

The quotation from the Maine opinion reveals the District Court's failure to appreciate that the process for party Presidential candidates is far different from the process for independents for the same office and therefore that the court's suggested comparison is wholly inappropriate. Ohio has argued cogently in its petition for a writ of certiorari (at 15-21) that the lower courts' inaccurate comparisons of party and non-party Presidential candidates ignore this Court's decisions in *Jenness v. Fortson,* 403 U.S. 431 (1971); *American Party v. White,* 415 U.S. 767 (1974) and *Storer v. Brown, supra,* by treating similarly classes of candidates which are not similarly situated. As this Court noted in *Jenness v. Fortson, supra,* 403 U.S. at 442, the "gravest discrimination can lie in treating things that are different as though they were exactly alike."

Applying this principle to the issue at hand, the District Courts erred by focusing solely on filing deadlines without giving due consideration to the fact that the vast differences in the ballot access procedures produce vastly different burdens on potential candidates. To cite but one example, since a party may have only one Presidential nominee, an individual seeking his party's nomination must compete with all the other aspirants for a single ballot position.[2] This formidable burden is

[2] As a matter of political reality, moreover, such competition begins well before April 1 of the year in which the Presidential election is held.

not placed on the person who seeks ballot access as an independent candidate because there is no limit on the number of such candidates. This difference, however, does not constitutionally entitle an individual to appear on the ballot under his party's designation if he is able to satisfy the same petition filing requirements as are imposed on independents.

We raise this example for two reasons. First, it demonstrates the doubtful manner in which the District Courts applied equal protection analysis in these cases in light of the great dissimilarities between independent and party Presidential candidates. Second, even if equal protection analysis requires that the burdens placed on party and non-party Presidential candidates be compared, it is a gross oversimplification to make that comparison in the context of a single requirement, namely, the date of the filing deadline. It is Maine's contention that the processes must be viewed in their entirety and that when such a comparison is undertaken, there is no basis for concluding, as the Maine, Maryland and Ohio District Courts have done, that independent candidates are subjected to greater burdens and thus denied equal protection.[3]

CONCLUSION

For the reasons stated, Maine as amicus curiae strongly urges this Court to grant Ohio's petition for a writ of certiorari in this case. Significant questions of public importance are posed, and the District Courts

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[3] To the extent that the successful utilization of a procedure is a measure of burdensomeness, it may bear noting that, excluding Anderson, there will be three independent Presidential candidates on Maine's general election ballot, but only two party candidates for that office.

which have ruled have failed to take into consideration decisions of this Court which appear to be not only relevant but dispositive.

Respectfully submitted,

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